Supreme Court, U.S.
FILED

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No. 96-___

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

THE PEOPLE OF THE STATE OF CALIFORNIA, *Petitioner*,

v.

ANTHONY RAY BROOME, *Respondent*.

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEAL, STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether evidence intentionally discarded by a person who has voluntarily fled from an unlawful detention must be suppressed.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

No. 96-___

THE PEOPLE OF THE STATE OF CALIFORNIA, *Petitioner*,

v.

ANTHONY RAY BROOME, *Respondent*.

The petitioner respectfully prays that a writ of certiorari issue to review the judgment of the California Court of Appeal, First Appellate District, filed on October 31, 1996.

OPINION BELOW

The unpublished opinion of the California Court of Appeal, filed on October 31, 1996, is attached to the petition as Appendix A. The California Supreme Court denied review on January 28, 1997. A copy of the order of denial is attached as Appendix B.

STATEMENT OF JURISDICTION

The opinion of the California Court of Appeal was filed on October 31, 1996. The California Supreme Court denied review on January 28, 1997, at which time the opinion of the court of appeal became final and reviewable by this Court. Cal. Rules of Court, rule 24(a), 25(a), 28(f). This petition for writ of certiorari followed within 90 days of the latter date. Supreme Court Rules,

rule 13.1. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. IV provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . ."

STATEMENT

A. Lower Court Proceedings

On March 10, 1995, the Mendocino County District Attorney filed an information charging respondent, Anthony Ray Broome, with two counts of transportation of a controlled substance (Cal. Health & Safety Code § 11379, subd. (a)) (Counts I & II) and two counts of possession of a controlled substance (Cal. Health & Safety Code § 11378) (Counts III & IV). The information further alleged that respondent served two prior prison terms pursuant to California Penal Code section 667.5 and suffered a prior conviction within the meaning of California Health and Safety Code section 11370.2, subdivision (c).

On April 4, 1995, respondent filed a motion to suppress evidence pursuant to Penal Code section 1538.5. On June 6, 1995, after testimony was heard, the trial court denied the motion to suppress.

On June 7, 1995, pursuant to a plea agreement, respondent pleaded guilty to Count I and admitted that he suffered a prior felony conviction.

On June 28, 1995, the trial court sentenced respondent to four years on Count I and three years on the prior, for a total term of seven years.

On October 31, 1996, the California Court of Appeal, First Appellate District, reversed the judgment of conviction, finding that the only evidence supporting the conviction had been obtained from respondent in violation of his rights under the Fourth Amendment. On January 28, 1997, the California Supreme Court denied petitioner's application for review.

B. Statement of Facts

The opinion of the California Court of Appeal provides a summary of facts relevant to the seizure of the evidence:

> "On January 10, 1995, around 10:30 p.m., Officer Taylor of the Ukiah Police Department saw a car with two occupants parked in front of a convenience store. Although several cars were parked in front of the store, the car that caught Taylor's attention was the only one parked facing the street, with the rear of the car near the front doors of the building. Taylor believed the occupants of the car might be robbing the business. He circled the store and returned to see the car being driven away. Taylor saw that the car's registration was expired and conducted a traffic stop.

"Defendant, who was alone in the car, got out, handing Taylor his license and registration. Taylor recognized defendant from a previous drug-related arrest and suspected he may have been involved in similar activity in the store parking lot. In Taylor's experience, a brief meeting in a car, often in a store parking lot, was consistent with a drug transaction.

"Taylor recalled that defendant had been on probation at the time of the earlier arrest, but defendant denied that was still the case. Taylor asked defendant if he could search him, but defendant refused. Police dispatch informed Taylor that defendant was currently on parole, had no warrants, and that his license was valid. Taylor then asked dispatch to obtain permission from a parole officer to search defendant. Defendant became visibly nervous and placed his right hand inside the breast area of his jacket. When defendant refused to comply with Taylor's request to remove his hand from his jacket, Taylor became concerned that defendant had a weapon. He grabbed defendant's arm, and a struggle ensued. Defendant eventually broke free and escaped, but not before discarding a plastic bag containing methamphetamine, which the officer recovered. Taylor estimated the time between the stop of the car and defendant's flight as approximately one minute." App. A at 13-14.

REASONS FOR GRANTING THE PETITION

In *California v. Hodari D.*, 499 U.S. 621 (1991), this Court held that a citizen who did not acquiesce in a police officer's show of authority and was not physically restrained had not been seized within the meaning of the Fourth Amendment. Consequently, any evidence discarded was not the fruit of a seizure. Furthermore, the Court opined, if a person is seized but breaks free and discards evidence, "it would hardly be realistic to say that that disclosure had been made during the course of an arrest [or seizure]." *Id.* at 625.

The California Court of Appeal disregarded this well-considered guidance. It first held that respondent's seizure, although lawful in its inception, became unreasonable because unduly prolonged.[1] The evidence discarded by respondent upon his escape was, the court concluded, fruit of the unlawful but now terminated detention. *Hodari D.* was distinguished on the basis that the youth in that case had never been seized. Therefore, there was no tree to bear poisonous fruit. In this case, by contrast, there had been a seizure and the subsequent abandonment of the evidence was the tainted fruit of the antecedent illegality. The state court of appeal concluded that this Court's discussion of the issue in *Hodari D.* was mere "dictum" (App. A, at 18, fn. 1) and, therefore, presumably not entitled to deference or consideration. Petitioner believes that *Hodari D.* foreclosed the result reached by the lower court, but even if the issue were res nova, the state court's conclusion is untenable.

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1. Petitioner does not challenge this aspect of the court of appeal's opinion because, even if true, it does not justify the suppression of the evidence.

Fruit of the poisonous tree analysis finds its modern-day genesis in *Wong Sun v. United States*, 371 U.S. 471 (1963), which declared: "We need not hold that all evidence is 'fruit of the poisonous tree' simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is 'whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'" *Id.* at 487-488. The defendant bears the burden of making a prima facie case that an exploitative nexus exists between the illegality and the challenged evidence. *Alderman v. United States*, 394 U.S. 165, 183 (1969). Once he does so, the burden shifts to the prosecution to prove that the taint caused by the primary illegality has been "purged" and that the evidence is admissible. *Id.*

The Court has recognized three purging circumstances: independent source (*Murray v. United States*, 487 U.S. 533 (1988)); inevitable discovery (*Nix v. Williams*, 467 U.S. 431 (1984)); and attenuation (*Wong Sun v. United States*, 371 U.S. at 491; *Nardone v. United States*, 308 U.S. 338, 341 (1939)). The first two exceptions involve fact-specific inquiries, which are satisfied by evidence that the government would have discovered the evidence even if the illegality had not occurred. *Murray v. United States*, 487 U.S. at 536-541. The third, attenuation, presumes causation in fact (*see New York v. Harris*, 495 U.S. 14, 19 (1990)) but holds the evidence admissible if intervening events purge the taint for reasons unrelated to causation.

The court of appeal found causation in fact: "Here, defendant discarded the drugs while fleeing after an unlawful detention. At that point, defendant had

reasonable cause to believe he would be searched in light of the officer's request for permission to conduct a parole search." App. A., at 18-19. In view of this finding[2/] independent source and inevitable discovery are unavailable to purge the taint of the unlawful detention. The question is whether respondent's flight and abandonment of the contraband, both voluntary acts, attenuated the connection between the detention and the evidence. The answer is yes, and the reasons may be found, as in all exclusionary rule analyses, by balancing the costs against the benefits of suppressing the evidence. *See Murray v. United States*, 487 U.S. at 539-541; *cf. United States v. Leon*, 468 U.S. 897, 913-921 (1984).

Analysis of the potential benefits of suppression reveals that they are insignificant or nonexistent. First, it may be argued that suppression will deter officers from making stops of citizens unjustified by the requisite level of suspicion. However, police are presumably deterred by the knowledge that evidence discovered *during* an illegal seizure will be suppressed. It is speculative to suggest that suppression of evidence discarded *after* the termination of a seizure will provide an additional disincentive to police who must quickly decide whether to stop a motorist or pedestrian.

Second, it may be urged that suppression will deter police from pursuing citizens with less than

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2. In California, reasonable suspicion is necessary to justify a parole search. *People v. Burgener*, 41 Cal. 3d 505, 528-536, 224 Cal. Rptr. 112, 714 P.2d 1251 (1986). The officer would have been unable to provide the parole officer with the requisite justification for the search. Having decided to ask for permission, the officer presumably would not have conducted the search if the parole officer had declined permission. Thus, at the time he fled, it is not clear that respondent's fear of an imminent search was "reasonable." Petitioner nevertheless assumes that it was.

reasonable suspicion. Such an argument is foreclosed by *Hodari D.* Not only is flight not a cognizable Fourth Amendment event requiring the application of the exclusionary rule, "it fully suffices to apply the deterrent [of the exclusionary rule] to [the police's] genuine, successful seizures." *California v. Hodari D.*, 499 U.S. at 627. Furthermore, an officer who already has stopped a citizen presumably believed that he was justified in doing so. Further action based upon that belief in the form of pursuit will not be deterred by suppression of discarded evidence.

Third, it may be suggested that suppression will deter recapture. The above rejoinders fully suffice to refute this suggestion. An officer who initially believed that his stop of a citizen was constitutionally valid will regard flight as a validation of his suspicion. *California v. Hodari D.* at 623 n.1. There is no reasonable possibility that he will forego pursuit. If he apprehends the citizen, suppression of evidence found at the time of the seizure fully serves the deterrent purpose of the exclusionary rule.

On the other side of the balance, the costs are palpable and unacceptable. First, and most obvious, the reliability of the fact-finding process is compromised by the suppression of evidence probative of guilt. *United States v. Leon*, 468 U.S. at 907; *Stone v. Powell*, 428 U.S. 465, 489-490 (1976). Second, as the Court pointed out in *Hodari D.*, "[s]treet pursuits always place the public at some risk . . . ." 499 U.S. at 627. The admissibility of discarded evidence will have the salutary benefit of encouraging citizens to comply with the police and later seek redress in the courts.

The bright-line rule created by *Hodari D.* requires reiteration in the context of flight from a

seizure.[3] Simply stated, a citizen's voluntary flight from a police officer and abandonment of incriminating evidence are independent intervening acts which attenuate the connection between an antecedent illegal seizure and the recovery of the discarded evidence. The court of appeal erred in holding to the contrary.

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3. The court of appeal's opinion cannot be regarded as an aberration not requiring corrective action by the Court. A widely respected commentator during the course of his criticism of *Hodari D.* has urged the result reached in this case (4 W. LaFave, Search and Seizure § 9.3(d), p. 124 n.148 (3d ed. 1996)), and at least one circuit is of the opinion that the recovery by police of evidence abandoned by a person fleeing from a seizure requires reasonable suspicion to justify the detention. *United States v. Coggins*, 986 F.2d 651 (3d Cir. 1993); *see also State v. Oguendo*, 233 Conn. 635, 613 A.2d 1300 (1992) (finding fruit of the poisonous tree under state constitution).

CONCLUSION

For the foregoing reasons, we respectfully request that the Petition for Writ of Certiorari to the California Court of Appeal be granted.

Dated: April 18, 1997

Respectfully submitted,

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APPENDIX A

FILED
COURT OF APPEAL
FIRST APPELLATE DISTRICT
October 31, 1996
RON D. BARROW, CLERK

NOT TO BE PUBLISHED
IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE, A070700

Plaintiff and Respondent, (Mendocino County Super. Ct. No. C12137)

v.

ANTHONY RAY BROOME,

Defendant and Appellant./

Defendant appeals from the judgment, challenging the denial of his motion to suppress evidence. We reverse.

Procedural History

Defendant was initially charged with two counts of transportation and two counts of possession for sale of methamphetamine. He was also charged with two prior prison commitments under Penal Code section 667.5, subdivision (b) and a prior drug-related conviction under Health and Safety Code section

11370.2, subdivision (c). Following denial of his motion to suppress evidence, defendant pled guilty to one count of transportation of methamphetamine and admitted the prior drug-related conviction. At sentencing, the court imposed the aggravated term of four years for the transportation charge and an additional three years for the prior conviction, for a total of seven years in prison. Defendant appeals the denial of his motion to suppress evidence.

Facts

Prosecution Evidence

On January 10, 1995, around 10:30 p.m., Officer Taylor of the Ukiah Police Department saw a car with two occupants parked in front of a convenience store. Although several cars were parked in front of the store, the car that caught Taylor's attention was the only one parked facing the street, with the rear of the car near the front doors of the building. Taylor believed the occupants of the car might be robbing the business. He circled the store and returned to see the car being driven away. Taylor saw that the car's registration was expired and conducted a traffic stop.

Defendant, who was alone in the car, got out, handing Taylor his license and registration. Taylor recognized defendant from a previous drug-related arrest and suspected he may have been involved in similar activity in the store parking lot. In Taylor's experience, a brief meeting in a car, often in a store parking lot, was consistent with a drug transaction.

Taylor recalled that defendant had been on probation at the time of the earlier arrest, but defendant denied that was still the case. Taylor asked

defendant if he could search him, but defendant refused. Police dispatch informed Taylor that defendant was currently on parole, had no warrants, and that his license was valid. Taylor then asked dispatch to obtain permission from a parole officer to search defendant. Defendant became visibly nervous and placed his right hand inside the breast area of his jacket. When defendant refused to comply with Taylor's request to remove his hand from his jacket, Taylor became concerned that defendant had a weapon. He grabbed defendant's arm, and a struggle ensued. Defendant eventually broke free and escaped, but not before discarding a plastic bag containing methamphetamine, which the officer recovered. Taylor estimated the time between the stop of the car and defendant's flight as approximately one minute.

On January 14, Officer Hoyle of the Ukiah Police Department stopped a car with a broken brake light. Defendant was the passenger, and Hoyle knew a warrant was outstanding for his arrest. Hoyle saw defendant manipulating a cylindrically shaped object in his pants pocket. Hoyle arrested defendant and recovered cash and narcotic paraphernalia from his person. He also recovered a film canister containing methamphetamine next to the passenger seat.

Defense Evidence

Defendant disputed various aspects of Officer Taylor's testimony as to the events of January 10. Defendant claimed he was not wearing a jacket when he stepped out of the car and, thus, did not reach into a jacket. He was wearing a shirt over a T-shirt, and he had a jacket in the car. He also testified that it took three or four minutes for dispatch to tell Taylor that defendant's license was valid. While Taylor waited for

information on defendant's license, he asked defendant about drug use and discussed defendant's prior arrest. When Taylor sought permission to search, defendant refused. Taylor asked dispatch to determine whether defendant was on probation. When he was told that defendant was not, he asked dispatch to determine if defendant was on parole. When Taylor received an affirmative response, he asked dispatch to seek permission for a search. Defendant fled. He estimated that 18 to 20 minutes passed between the stop of the car and his flight. Later, he raised that estimate to a half-hour. Defendant denied possessing or discarding methamphetamine.

The Trial Court's Ruling

The court concluded that Officer Taylor was justified in stopping defendant's car on January 10 because of its expired registration. Thereafter, the detention was not unduly prolonged, given the facts of which the officer was aware. Officer Hoyle's traffic stop on January 14 was justified by the equipment violation, and defendant was properly arrested on the outstanding warrant.

Discussion

I. Lawfulness of Traffic Stop

Defendant first contends the stop of his car on January 10 was unlawful because the officer used the expired registration as a "pretext" for stopping him to investigate other criminal activity the officer suspected. Defendant asks us to find his detention unlawful based upon the subjective intent of Officer Taylor. The United States Supreme Court recently ruled that the detaining officer's subjective intent is irrelevant in such

circumstances and that a traffic stop is lawful so long as probable cause exists. (*Whren* v. *U.S.* (1996) ___ U.S. ___ [116 S.Ct. 1769, 1772-1774].) As to the admissibility of evidence in light of a Fourth Amendment challenge, our ruling is controlled by United States Supreme Court precedent. (*In re Lance W.* (1985) 37 Cal.3d 873, 896.) Here, the trial court found, and defendant does not dispute, that his registration was expired. Consequently, probable cause existed for the traffic stop, and Officer Taylor's subjective intent is irrelevant.

II. Length of Detention

Inferentially, defendant contends that, even if the stop of his vehicle was lawful, his detention was unduly prolonged. The trial court determined that the detention was not unduly prolonged, because the officer's actions were justified by the facts as they developed. The court did not resolve the conflict in testimony as to the actual length of the detention before defendant's flight. We, of course, cannot and will not do so in the first instance. Nonetheless, we disagree with the trial court and hold that defendant's detention was unduly prolonged.

An officer may not extend "the detention beyond the period necessary to perform his duties arising from the traffic stop" unless there exists "'specific and articulable facts' that could support a rational suspicion that defendant" was "involved in 'some activity relating to crime.'" (*People* v. *McGaughran* (1979) 25 Cal.3d 577, 591, quoting *In re Tony C.* (1978) 21 Cal.3d 888, 893.) By relying on *In re Tony C.*, the *McGaughran* court logically held that the same level of justification required to initiate a traffic stop is required to prolong a traffic stop beyond its original purpose. Here, once Officer Taylor identified defendant and determined he

was validly licensed, his principal duty was to complete the citation for the expired registration. Only specific and articulable facts supporting a rational suspicion that defendant was involved in criminal activity would justify prolonging the detention to obtain permission to search defendant and, thereafter, to conduct a parole search. The facts known to Taylor at the time the detention was prolonged were as follows. He had seen defendant parked in front of a convenience store facing the street with a passenger in the car. Moments later, he saw defendant drive away without the passenger. In his experience, such conduct was consistent with a drug transaction. He had previously arrested defendant for a narcotic offense, and defendant was currently on parole. That information would be sufficient to justify prolonging the detention only if it would have been sufficient to justify a detention *ab initio*. We hold it would not. Setting aside the Vehicle Code violation, Taylor would not have been justified in stopping defendant's car. Therefore, he was not justified in prolonging the detention beyond its original purpose relating to the Vehicle Code violation.

The Attorney General relies upon *People* v. *Valencia* (1993) 20 Cal.App.4th 906, 918-919, which is distinguishable. There, following a traffic stop, officers suspected the car might have been stolen and the occupants might be trafficking narcotics. To that end, they conducted an extended interrogation of the occupants. (*Id.* at pp. 908-911.) However, during this period of time, the officers were not able to determine if the driver had a valid license or otherwise to properly identify him. (*Id.* at pp. 918-919.) Thus, the prolonged detention was justified to resolve the question of the driver's identity. Here, defendant was properly identified, and his license was valid. There was no

cognizable reason to detain him any longer than it took to complete the citation procedure.

The district attorney argued below that the officer did not need to contact a parole officer to obtain permission to search, citing *People* v. *Brown* (1989) 213 Cal.App.3d 187, 192. We agree. However, in order to conduct a parole search, the officer was required to have the same level of suspicion required to lawfully detain. (*Ibid.*) Thus, if the officer were justified in detaining defendant, he could have conducted a parole search without permission from a parole agent. We have concluded that Taylor was not justified in prolonging the detention of defendant because, at that stage, he lacked the information necessary to justify a detention. Therefore, the officer could not conduct a parole search whether or not he had permission from a parole agent.

Because we hold defendant's detention was unlawful, the fruits of the detention must be suppressed. (*Wong Sun* v. *United States* (1963) 371 U.S. 471, 488.) Relying upon *California* v. *Hodari D.* (1991) 499 U.S. 621, the Attorney General suggests that, because defendant discarded the methamphetamine while fleeing from Officer Taylor, its recovery was not a fruit of the detention. However, *Hodari D.* is distinguishable because, there, the minor had not been seized before he discarded the contraband.[1/] (*Id.* at p. 626.) Here, defendant discarded the drugs while fleeing after an unlawful detention. At that point, defendant had reasonable cause to believe he would be searched in

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1. In *Hodari D., supra*, Justice Scalia suggested that contraband discarded by a suspect after he has broken free from a seizure and fled is not the product of the seizure. (499 U.S. at p. 625.) This suggestion, however, was dictum.

light of the officer's request for permission to conduct a parole search." It is only when a person has reasonable cause to believe his private possessions will inevitably be exposed to view by improper police practices, that their attempted abandonment will be deemed the fruit of that conduct." (*People* v. *Holloway* (1985) 176 Cal.App.3d 150, 156.) The recovery of the methamphetamine on January 10 was a fruit of the unlawful detention, as was the arrest warrant arising from that incident. Therefore, defendant's arrest on January 14 and the recovery of evidence on that date were also fruits of his unlawful detention on January 10, and the evidence should have been suppressed.

Conclusion

As we have noted, *Whren* v. *U.S., supra*, 116 S.Ct. 1769, stands for the proposition that a traffic violation alone can justify a detention and that the detaining officer's subjective intent is irrelevant. In such situations, however, trial courts must be vigilant that detentions based only on a traffic violation remain limited in scope and duration as is commensurate with their justification. Law enforcement should not understand *Whren* as license to prolong a traffic detention in order to investigate other activity of which they have suspicions inadequate to independently justify the detention. Here, defendant was subjected to an unduly prolonged detention. He refused to consent to a search of his person, as was his right. The officer continued to seek authorization to search rather than completing the citation process and sending defendant on his way. We cannot conclude that this was a reasonable seizure for purposes of the Fourth Amendment.

Disposition

The judgment is reversed.

Corrigan, Acting P.J.

We concur:

Parrilli, J.

Walker, J.

APPENDIX B

First Appellate District
Division Three, No. A070700
S057798

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Respondent

v.

ANTHONY RAY BROOME, Appellant

Petition for review DENIED.

Kennard, J., Baxter, J., and Werdegar, J., are of the opinion the petition should be granted.

George
Chief Justice

SUPREME COURT
Filed January 28, 1997
Robert Wandruff, Clerk